

CENTER FOR ENVIRONMENTAL LAW & POLICY

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September 21, 2000

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Lynne Krasnow
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Re: Comments on NMFS draft Biological Opinion (BiOp) for FCRPS

To Whom It May Concern:

The Center for Environmental Law & Policy (CELP) is a nonprofit, membership-based organization dedicated to clean, flowing waters for Washington. CELP is integrally concerned with conserving and restoring the state's precious water resources, and protecting the unique marine and riverine life that depends upon these resources. As part of a program focusing on the protection of instream flows for the many rivers and streams in Washington, CELP monitors water use within the state along with the state's water permitting activities - ensuring that such activities do not have the public interest in Washington's waters.

Many of Washington's streams, rivers, and aquifers are currently over-appropriated and lack sufficient flows to meet the needs of fish. The Columbia River represents just one of these over-appropriated river systems. Already, half of the River's flow in low flow periods is diverted for irrigation purposes. While NMFS BiOp assesses the Impact of federal actions on the River, it fails to consider the significant cumulative effects that will result from state activities. Specifically, the BiOp must consider the likely and certain effects from both the perfection of existing water rights and the State of Washington's authority to permit further -withdrawals from the Columbia.

The State of Washington's Water Permitting Activities
Will Greatly Impact Flows in the Columbia and Must Be Considered

Under 50 CFR § 402.14(g)(3), a biological opinion must include an evaluation of "the actions and cumulative effects on the listed species or critical habitat". "Cumulative effects" include 6(those effects of future State or private activities, not involving Federal activities, that are reasonably certain to occur within the action area... " 50 CFR § 402.02.

The "Cumulative Effects" section of NMFS draft BiOp, Section 7, states that there are no non-Federal activities that meet the definition of "cumulative effects" which must be considered. This statement is grossly inaccurate, as future state actions within Washington will greatly Impact Columbia River flows and alter assumptions made in the draft BiOp.

The Washington State legislature 'instituted a moratorium on further withdrawals from the Columbia River in the early 1990's, yet lifted this moratorium in 1997. Over 100 applications are currently pending before the State Department of Ecology (Ecology), in which applicant's are in the aggregate requesting the right to consumptively draw over 900 cfs from the Columbia River (this includes groundwater applications for groundwater in significant hydraulic continuity with the River). Ecology is required to process these applications, and has given the indication it intends to proceed with granting further diversions. As a state activity that is reasonably certain to occur, which will greatly impact Columbia River flows, the state's permitting of further withdrawals must be considered in the draft BiOp.

As well, over 150 Columbia River water right permits are on file with Ecology. These permits represent inchoate water -use that has been permitted but not yet fully perfected (fully used). In sum, over 1600 cfs (roughly 330,000 acre feet per year) of water has been permitted but not yet fully perfected. This means that the current flow of the River fails to adequately reflect the amount of water permitted for diversion or withdrawal under water rights already granted by the state. As a result, **Columbia River flows will continue to decrease, even without any further permitting action on the state's part**, as permittees perfect their water rights. This activity is *certain* to occur, and must be considered in the draft BiOp.

We respectfully request these deficiencies be remedied. If you have any further questions regarding these comments, please feel free to call.

Sincerely,

Kristie E. Carevich
Associate Attorney